



MEMORANDUM

DATE: October 16, 2009

TO: All Medicare Advantage Organizations, Part D Sponsors, 1876 and 1833 Cost Contractors, PACE and Medicare Advantage Demonstrations

FROM: Teresa DeCaro, RN, M.S, Acting Director
Medicare Drug and Health Plan Contract Administration Group

SUBJECT: Allowable Use of Medicare Beneficiary Information Obtained from CMS

The purpose of this memo is to clarify the use of beneficiary information obtained from CMS by all Medicare Advantage (MA) Contractors, Part D Sponsors, cost contractors, PACE and MA demonstrations (including individual market and employer plans). The policy outlined in this memo supersedes prior guidance on this topic, and we intend to enforce this guidance on a prospective basis.

The CMS restrictions on use of beneficiary data are contained in the Data Use Attestation that is signed by all CMS MA, Part D, PACE, and cost plans in order to participate in the program. By signing the Data Use Attestation, organizations or sponsors agree that, as a condition of having been granted permission to use and receive beneficiary information from CMS databases, they will restrict the use of Medicare data to those purposes directly related to the administration of the Medicare managed care and/or outpatient prescription drug benefits for which they have contracted with CMS to administer. They also agree not to use that information to develop, market, or operate lines of business unrelated to their Medicare plan operations.

For purposes of these Data Use Attestations, CMS-provided data includes information provided by beneficiaries in the course of enrollment as well as data obtained solely as a result of access to CMS systems granted to the contracting organization or sponsor because it is a Part C, Part D, PACE or cost plan contractor. Except in cases in which the enrollee gave information as part of a commercial relationship prior to enrollment in the Medicare plan, the contracting organization or sponsor was only given the information on the application as a result of the contract with CMS.

While we feel it is important to protect Medicare beneficiaries from potentially unwelcome marketing and other communications, we also recognize plans' interest in contacting their enrollees on issues unrelated to the specific plan benefit that they contract with CMS to provide

to those enrollees. The current Medicare Marketing Guidelines (hereinafter referred to as “Guidelines”) outline the requirements for acceptable marketing practices of other health-related lines of business, as well as non-health care related lines of business. Upon review of the Data Use Agreement, we determined that additional guidance related to the distribution of other types of non-plan related information would be of assistance. Attachment 1 to this memo includes a description of that guidance, as well as guidance on obtaining prior authorization from enrollees and on allowable mingling of plan and non-plan information.

The current Medicare Marketing Guidelines can be found at <http://www.cms.hhs.gov/ManagedCareMarketing> on the web. If you have any questions about whether plan communications comply with the MA or Part D program requirements and guidance and Federal law, we encourage you to contact Camille Brown at camille.brown@cms.hhs.gov .